

E-Filed 10/20/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HENRY GLOVER,

No. C 10-4012 RS (PR)

Petitioner,

ORDER OF DISMISSAL

v.

APPELLATE COURT,

Respondent.

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. Earlier this year, petitioner filed a federal petition (No. C 10-2426) identical to the instant petition. This prior petition was dismissed because petitioner had not shown that his petition, which challenged his 1996 California state conviction, should not be dismissed as untimely. With the filing of the instant petition, which also challenges the 1996 conviction, the question arises whether the instant petition is second or successive to the previously dismissed petition.

Where a claim presented in a second or successive habeas corpus petition under 28 U.S.C. § 2254 has been presented in a prior petition, such claim must be dismissed. *See* 28 U.S.C. § 2244(b)(1). Before a second or successive habeas petition may be filed in the

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1 district court, the petitioner must first obtain from the Court of Appeals an order authorizing
2 the district court to consider the petition. *Id.* § 2244(b)(3)(A).

3 By the instant petition, petitioner seeks, in essence, to challenge the same conviction
4 presented in the prior petition. Accordingly, the instant petition is successive to the prior
5 petition. Petitioner may not proceed with his petition until he has sought and obtained from
6 the Ninth Circuit Court of Appeals an order authorizing him to file a second or successive
7 petition in the district court. Accordingly, the instant petition will be dismissed without
8 prejudice to petitioner's refiling the petition if he obtains the necessary order.

9 Petitioner's motion to proceed *in forma pauperis* (Docket Nos. 2 & 5) is GRANTED.
10 This order terminates Docket Nos. 2 & 5.

11 The Clerk shall enter judgment in favor of respondent, terminate the pending motions,
12 and close the file.

13 **IT IS SO ORDERED.**

14 DATED: October 20, 2010


RICHARD SEEBORG
United States District Judge